

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:23-cv-00824-MR-WCM

RAMAR DION BENJAMIN CRUMP,)	
)	
)	
Plaintiff,)	ORDER
)	
vs.)	
)	
)	
GEOFFREY ANDERSON, et al.,)	
)	
Defendants.)	
)	

This matter is before the Court on Plaintiff’s “Motion to Set Aside Default Judgment & Entry of Default” [Doc. 18]. As no judgment has been entered, the Court construes this filing as being a motion to set aside the entry of default.

Pro se Plaintiff Ramar Dion Benjamin Crump (“Plaintiff”) is a prisoner of the State of North Carolina who is currently incarcerated at Warren Correctional Institution (“Warren CI”) in Norlina, North Carolina. Plaintiff filed this action on November 30, 2023, pursuant to 42 U.S.C. § 1983, against numerous Defendants, including Demaris Clegg, who is identified as a Deputy with the Mecklenburg County Sheriff’s Office. [Doc. 1].

Plaintiff’s Complaint survived initial review in part. [Doc. 7]. Defendants answered and Defendant Clegg asserted a Counterclaim against

Plaintiff for assault.¹ [Doc. 9].

After Plaintiff failed to timely answer Defendant Clegg's Counterclaim, the Court ordered Defendant Clegg to take action to prosecute the Counterclaim and Defendant Clegg moved for an entry of default against Plaintiff. [Docs. 13, 14].

On May 31, 2024, the Clerk entered default as to the Counterclaim. [Doc. 17].

Plaintiff now requests that the entry of default be set aside. [Doc. 18]. As grounds, Plaintiff states that he has not received Defendants' Answer, and "has yet to see the Statement of Claim" made by Defendant Clegg. [Id. at 1]. Plaintiff further argues that the law disfavors the entry of default and that any doubt should be resolved in favor of setting aside an entry of default and deciding the case on its merits. [Id. at 3]. Plaintiff also asks the Court to dismiss the Counterclaim due to lack of service on Plaintiff. [Id.].

Defendant Clegg has responded to Plaintiff's motion and does not object to Plaintiff's request to set aside the entry of default. [Doc. 19]. Defendants have also filed an Amended Certificate of Service stating that their Answer has been mailed to Plaintiff at Warren CI. [Doc. 20].

¹ The Certificate of Service reflects service on Plaintiff at Foothills Correctional Institution ("Foothills CI") in Morganton, North Carolina. [Doc. 9 at 5]. Plaintiff was previously incarcerated at Foothills CI but failed to notify the Court of his new address at Warren CI. [See 6/17/2024 Text-Only Notice].

Under these circumstances, the Court will grant Plaintiff's motion in part and will vacate the entry of default. To the extent Plaintiff requests the dismissal of the Counterclaim, such request appears to seek an additional remedy on the basis that Plaintiff did not receive the Counterclaim previously. Plaintiff remains free to challenge the Counterclaim on the merits if appropriate under the Federal Rules of Civil Procedure and by way of separate motion. However, the undersigned does not find that any additional relief on procedural grounds is appropriate at this time.²

IT IS, THEREFORE, ORDERED that Plaintiff's "Motion to Set Aside Default Judgment & Entry of Default" [Doc. 18] is **GRANTED IN PART** as stated herein and the Clerk's Entry of Default [Doc. 17] is hereby **VACATED AND SET ASIDE**.

Signed: June 24, 2024



W. Carleton Metcalf
United States Magistrate Judge



² With respect to his address, on June 17, 2024, the Clerk reminded Plaintiff of his duty to promptly notify the Clerk of a change of address, mailed a blank Change of Address form to Plaintiff, and directed Plaintiff to update his address within 14 days. [6/17/2024 Text-Only Notice].